

**Calendar No. 114**

108TH CONGRESS  
1ST SESSION

**S. 1104**

To amend title 10, United States Code, to provide for parental involvement in abortions of dependent children of members of the Armed Forces.

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IN THE SENATE OF THE UNITED STATES

MAY 22, 2003

Mr. BROWNBACK introduced the following bill; which was read the first time

MAY 23, 2003

Read the second time and placed on the calendar

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**A BILL**

To amend title 10, United States Code, to provide for parental involvement in abortions of dependent children of members of the Armed Forces.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. PROTECTION OF CHILDREN AND PARENTAL IN-**  
 2 **VOVEMENT IN THE PERFORMANCE OF**  
 3 **ABORTIONS FOR DEPENDENT CHILDREN OF**  
 4 **MEMBERS OF THE ARMED FORCES.**

5 Section 1093 of title 10, United States Code, is  
 6 amended by adding at the end the following new sub-  
 7 sections:

8 “(c) PARENTAL NOTICE.—(1) A physician may not  
 9 use facilities of the Department of Defense to perform an  
 10 abortion on a pregnant unemancipated minor who is a  
 11 child of a member of the armed forces unless—

12 “(A) the physician gives at least 48 hours ac-  
 13 tual notice, in person or by telephone, of the physi-  
 14 cian’s intent to perform the abortion to—

15 “(i) the member of the armed forces, or  
 16 another parent of the minor, if the minor has  
 17 no managing conservator or guardian; or

18 “(ii) a court-appointed managing conser-  
 19 vator or guardian;

20 “(B) the judge of an appropriate district court  
 21 of the United States issues an order authorizing the  
 22 minor to consent to the abortion as provided by sub-  
 23 section (d) or (e);

24 “(C) the appropriate district court of the  
 25 United States by its inaction constructively author-

1       izes the minor to consent to the abortion as provided  
2       by subsection (d) or (e); or

3       “(D) the physician performing the abortion—

4               “(i) concludes that on the basis of the phy-  
5       sician’s good faith clinical judgment, a condi-  
6       tion exists that complicates the medical condi-  
7       tion of the minor and necessitates the imme-  
8       diate abortion of her pregnancy to avert her  
9       death or to avoid a serious risk of substantial  
10      and irreversible impairment of a major bodily  
11      function; and

12              “(ii) certifies in writing to the appropriate  
13      medical official of the Department of Defense,  
14      and in the patient’s medical record, the medical  
15      indications supporting the physician’s judgment  
16      that the circumstances described by clause (i)  
17      exist.

18      “(2) If a person to whom notice may be given under  
19      paragraph (1)(A) cannot be notified after a reasonable ef-  
20      fort, a physician may perform an abortion if the physician  
21      gives 48 hours constructive notice, by certified mail, re-  
22      stricted delivery, sent to the last known address, to the  
23      person to whom notice may be given under that para-  
24      graph. The period under this paragraph begins when the  
25      notice is mailed. If the person required to be notified is

1 not notified within the 48-hour period, the abortion may  
2 proceed even if the notice by mail is not received.

3 “(3) The requirement that 48 hours actual notice be  
4 provided under this subsection may be waived by an affi-  
5 davit of—

6 “(A) the member of the armed forces con-  
7 cerned, or another parent of the minor, if the minor  
8 has no managing conservator or guardian; or

9 “(B) a court-appointed managing conservator  
10 or guardian.

11 “(4) A physician may execute for inclusion in the mi-  
12 nor’s medical record an affidavit stating that, according  
13 to the best information and belief of the physician, notice  
14 or constructive notice has been provided as required by  
15 this subsection. Execution of an affidavit under this para-  
16 graph creates a presumption that the requirements of this  
17 subsection have been satisfied.

18 “(5) A certification required by paragraph (1)(D) is  
19 confidential and privileged and is not subject to disclosure,  
20 discovery, subpoena, or other legal process. Personal or  
21 identifying information about the minor, including her  
22 name, address, or social security number, may not be in-  
23 cluded in a certification under paragraph (1)(D). The phy-  
24 sician must keep the medical records on the minor in com-

1 pliance with regulations prescribed by the Secretary of De-  
2 fense.

3 “(6) A physician who intentionally performs an abor-  
4 tion on a pregnant unemancipated minor in violation of  
5 this subsection commits an offense punishable by a fine  
6 not to exceed \$10,000.

7 “(7) It is a defense to prosecution under this sub-  
8 section that the minor falsely represented her age or iden-  
9 tity to the physician to be at least 18 years of age by dis-  
10 playing an apparently valid governmental record of identi-  
11 fication such that a reasonable person under similar cir-  
12 cumstances would have relied on the representation. The  
13 defense does not apply if the physician is shown to have  
14 had independent knowledge of the minor’s actual age or  
15 identity or failed to use due diligence in determining the  
16 minor’s age or identity.

17 “(d) JUDICIAL APPROVAL.—(1) A pregnant  
18 unemancipated minor who is a child of a member of the  
19 armed forces and who wishes to have an abortion using  
20 facilities of the Department of Defense without notifica-  
21 tion to the member of the armed forces, another parent,  
22 her managing conservator, or her guardian may file an  
23 application for a court order authorizing the minor to con-  
24 sent to the performance of an abortion without notification

1 to either of her parents or a managing conservator or  
2 guardian.

3 “(2) Any application under this subsection may be  
4 filed in any appropriate district court of the United States.  
5 In the case of a minor who elects not to travel to the  
6 United States in pursuit of an order authorizing the abor-  
7 tion, the court may conduct the proceedings in the case  
8 of such application by telephone.

9 “(3) An application under this subsection shall be  
10 made under oath and include—

11 “(A) a statement that the minor is pregnant;

12 “(B) a statement that the minor is unmarried,  
13 is under 18 years of age, and has not had her dis-  
14 abilities removed;

15 “(C) a statement that the minor wishes to have  
16 an abortion without the notification of either of her  
17 parents or a managing conservator or guardian; and

18 “(D) a statement as to whether the minor has  
19 retained an attorney and, if she has retained an at-  
20 torney, the name, address, and telephone number of  
21 her attorney.

22 “(4) The court shall appoint a guardian ad litem for  
23 the minor. If the minor has not retained an attorney, the  
24 court shall appoint an attorney to represent the minor.  
25 If the guardian ad litem is an attorney, the court may

1 appoint the guardian ad litem to serve as the minor's at-  
2 torney.

3       “(5) The court may appoint to serve as guardian ad  
4 litem for a minor—

5               “(A) a psychiatrist or an individual licensed or  
6 certified as a psychologist;

7               “(B) a member of the clergy;

8               “(C) a grandparent or an adult brother, sister,  
9 aunt, or uncle of the minor; or

10              “(D) another appropriate person selected by the  
11 court.

12       “(6) The court shall determine within 48 hours after  
13 the application is filed whether the minor is mature and  
14 sufficiently well-informed to make the decision to have an  
15 abortion performed without notification to either of her  
16 parents or a managing conservator or guardian, whether  
17 notification would not be in the best interest of the minor,  
18 or whether notification may lead to physical, sexual, or  
19 emotional abuse of the minor. If the court finds that the  
20 minor is mature and sufficiently well informed, that notifi-  
21 cation would not be in the minor's best interest, or that  
22 notification may lead to physical, sexual, or emotional  
23 abuse of the minor, the court shall enter an order author-  
24 izing the minor to consent to the performance of the abor-  
25 tion without notification to either of her parents or a man-

1 aging conservator or guardian and shall execute the re-  
2 quired forms.

3 “(7) If the court fails to rule on the application with-  
4 in the period specified in paragraph (6), the application  
5 shall be deemed to be granted and the physician may per-  
6 form the abortion as if the court had issued an order au-  
7 thorizing the minor to consent to the performance of the  
8 abortion without notification under subsection (c).

9 “(8) If the court finds that the minor does not meet  
10 the requirements of paragraph (6), the court may not au-  
11 thorize the minor to consent to an abortion without the  
12 notification authorized under subsection (c)(1).

13 “(9) The court may not notify a parent, managing  
14 conservator, or guardian that the minor is pregnant or  
15 that the minor wants to have an abortion. The court pro-  
16 ceedings shall be conducted in a manner that protects the  
17 anonymity of the minor. The application and all other  
18 court documents pertaining to the proceedings are con-  
19 fidential and privileged and are not subject to disclosure,  
20 discovery, subpoena, or other legal process. The minor  
21 may file the application using a pseudonym or using only  
22 her initials.

23 “(10) An order of the court issued under this sub-  
24 section is confidential and privileged and is not subject  
25 to disclosure, discovery, subpoena, or other legal process.



1 The order may not be released to any person but the preg-  
2 nant minor, the pregnant minor’s guardian ad litem, the  
3 pregnant minor’s attorney, another person designated to  
4 receive the order by the minor, or a governmental agency  
5 or attorney in a criminal or administrative action seeking  
6 to assert or protect the interest of the minor.

7 “(11) A filing fee is not required of and court costs  
8 may not be assessed against a minor filing an application  
9 under this subsection.

10 “(e) APPEAL.—(1) A minor whose application under  
11 subsection (d) is denied may appeal to the court of appeals  
12 of the United States having jurisdiction of the district  
13 court of the United States that denied the application. If  
14 the court of appeals fails to rule on the appeal within 48  
15 hours after the appeal is filed, the appeal shall be deemed  
16 to be granted and the physician may perform the abortion  
17 using facilities of the Department of Defense as if the  
18 court had issued an order authorizing the minor to con-  
19 sent to the performance of the abortion using facilities of  
20 the Department of Defense without notification under  
21 subsection (c). Proceedings under this subsection shall be  
22 given precedence over other pending matters to the extent  
23 necessary to assure that the court reaches a decision  
24 promptly.

1       “(2) A ruling of the court of appeals under this sub-  
 2 section is confidential and privileged and is not subject  
 3 to disclosure, discovery, subpoena, or other legal process.  
 4 The ruling may not be released to any person but the  
 5 pregnant minor, the pregnant minor’s guardian ad litem,  
 6 the pregnant minor’s attorney, another person designated  
 7 to receive the ruling by the minor, or a governmental agen-  
 8 cy or attorney in a criminal or administrative action seek-  
 9 ing to assert or protect the interest of the minor.

10       “(3) A filing fee is not required of and court costs  
 11 may not be assessed against a minor filing an appeal  
 12 under this subsection.

13       “(f) DEFINITIONS.—In this section:

14               “(1) The term ‘abortion’ means the use of any  
 15 means at a medical facility of the Department of  
 16 Defense to terminate the pregnancy of a female  
 17 known by an attending physician to be pregnant,  
 18 with the intention that the termination of the preg-  
 19 nancy by those means will with reasonable likelihood  
 20 cause the death of the fetus. The term applies only  
 21 to an unemancipated minor known by an attending  
 22 physician to be pregnant and may not be construed  
 23 to limit a minor’s access to contraceptives.

24               “(2) The term ‘appropriate district court of the  
 25 United States’ means—

1           “(A) with respect to a proposed abortion at  
2           a particular Department of Defense medical fa-  
3           cility in the United States or its territories, the  
4           district court of the United States having prop-  
5           er venue in relation to that facility; or

6           “(B) if the minor is seeking an abortion at  
7           a particular Department of Defense facility out-  
8           side the United States or its territories—

9           “(i) if the minor elects to travel to the  
10          United States in pursuit of an order au-  
11          thorizing the abortion, the district court of  
12          the United States having proper venue in  
13          the district in which the minor first arrives  
14          from outside the United States; or

15          “(ii) if the minor elects not to travel  
16          to the United States in pursuit of an order  
17          authorizing the abortion, the district court  
18          of the United States for the district in  
19          which the minor last resided.

20          “(3) The term ‘fetus’ means an individual  
21          human organism from fertilization until birth.

22          “(4) The term ‘guardian’ means a court-ap-  
23          pointed guardian of the person of the minor.

24          “(5) The term ‘physician’ means an individual  
25          licensed to practice medicine.

1           “(6) The term ‘unemancipated minor’ includes  
2           a minor who is not a member of the armed forces  
3           and who—  
4                   “(A) is unmarried; and  
5                   “(B) has not had any disabilities of minor-  
6           ity removed.”.



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